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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA

21 EQUAL EMPLOYMENT OPPORTUNITY
22 COMMISSION,

23 Plaintiff,

24 v.

25 THE CUSTOMER COMPANY dba
26 CIGARETTES CHEAPER!,

27 Defendant.

28 CIVIL ACTION NO. C 02-2501 CW MEJ

STIPULATED FINAL JUDGMENT AND
ORDER

29 I. INTRODUCTION

30 WHEREAS, Plaintiff, United States Equal Employment Opportunity Commission
31 ("EEOC"), filed this action against the Defendant, The Customer Company dba Cigarettes
32 Cheaper! pursuant to Title I of the Americans with Disabilities Act ("the ADA"), 42 U.S.C.
33 Section 12101 et seq. and Title I of the Civil Rights Act of 1991. The Commission's complaint
34 alleged that Cigarettes Cheaper! violated the ADA through impermissible pre-employment

STIPULATED JUDGMENT

1 medical inquiries and commingling of medical records. The complaint also alleged that
 2 Defendant terminated the employment of Ms. Mendonca based on her responses to its
 3 impermissible medical questions or, alternatively, because Ms. Mendonca had a record of a
 4 disability.

5 WHEREAS, the EEOC and Defendant Cigarettes Cheaper! have agreed to entry of this
 6 Stipulated Final Judgment and Order and stipulate to the Court's findings below;

7 THEREFORE, the Court now finds:

8 1. This Court has jurisdiction over the Commission's claim pursuant to 28 U.S.C. §§ 1331,
 9 1337(a) and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b(a), 6102(c) and 6105. This Court has
 10 jurisdiction over the parties.

11 2. Venue in the Northern District of California, United States District Court, is proper.

12 3. Defendant, The Customer Company dba Cigarettes Cheaper! is not the proper name for
 13 the Defendant in this lawsuit. The appropriate Defendant is Cigarettes Cheaper! Cigarettes
 14 Cheaper! expressly agrees that it is appropriately bound by the terms of this Consent Decree.

15 4. Plaintiff EEOC has the authority to seek the relief it requests, and the Court has the
 16 authority to grant it.

17 5. This Order constitutes the final adjudication of all claims of EEOC in connection with the
 18 matters alleged in the Complaint. Other than any enforcement proceedings brought in connection
 19 with this Final Judgment, the EEOC will not seek any further relief from the Defendant arising
 20 out of the facts as alleged in the Complaint filed in this action.

21 6. Entry of this Order is in the public interest.

22 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:**

23 7. The Conditional Order of Dismissal entered by the court on November 25, 2003 is hereby
 24 VACATED.

25 8. A judgment for monetary relief is hereby entered into against Defendant Cigarettes
 26 Cheaper! in the amount of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) in
 27 full compromise of the discrimination claims made in this lawsuit. The judgment represents
 28

STIPULATED JUDGMENT

1 payment for emotional distress, pain and suffering.

2 9. The judgment shall be paid as follows:

- 3 a. When payment by Defendant RJ Reynolds occurs in a settlement of or the result
4 of trial in the action RJ Reynolds Tobacco Company and GMB, Inc., v. Premium
5 Tobacco Stores, Inc., et al. and related cross-claims, Northern District of Illinois
6 Civil Action No. 99 C 1174 (Judge Kocoras) (*RJ Reynolds*"), then the judgment
7 will be payable to Wynelle Mendonca within thirty (30) days.
- 8 b. If Cigarettes Cheaper! does not recover any amount in the *RJ Reynolds* action,
9 then the judgment will be paid within thirty (30) days of a final judgment
10 (including all appeals) in that action.
- 11 c. Defendant shall make payment in the form of a business check, cashier's check or
12 certified check made payable to Wynelle Mendonca and mailed to Ms. Mendonca
13 at her home address.
- 14 d. Cigarettes Cheaper! will issue an IRS Form 1099 for the monetary relief.
- 15 e. Cigarettes Cheaper! shall fax a copy of the check to the EEOC to the attention of
16 Marcia Mitchell, Senior Trial Attorney, 350 The Embarcadero, Suite 500, San
17 Francisco, CA 94105, facsimile number 415/625-5657.

18 10. Cigarettes Cheaper! shall inform the EEOC in writing of the status of the *RJ Reynolds*
19 litigation within fourteen (14) days of the occurrence of any of the following actions: (a) entry of
20 a verdict at trial (whether during the first trial or on remand from the court of appeals) or other
21 final order at the trial court level; (b) filing by either party of a notice of appeal; (c) entry of a
22 court of appeals decision. Upon request, Cigarettes Cheaper! shall provide the EEOC with a
23 copy of any orders entered by a court with regard to any of the actions listed above.

24 11. For the purposes of this Order, all written notifications to the Commission shall be mailed
25 to: Regional Attorney, U.S. Equal Employment Opportunity Commission, 350 The Embarcadero,
26 Suite 500, San Francisco, CA 94105.


RETENTION OF JURISDICTION FOR
ENFORCEMENT OF JUDGMENT.

12. U.S. Magistrate Maria Elena James shall retain jurisdiction to enforce the terms of of this Final Judgment.

13. Dismissal of this lawsuit with prejudice is conditioned upon the parties' full compliance with the terms of this Final Judgment


**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

DATED: 9/15/04



WILLIAM R. TAMAYO
Regional Attorney

DATED: 9/15/04



MARCIA L. MITCHELL
Senior Trial Attorney

AIKEN KRAMER CUMMINGS

DATED: 9-13-04



MATTHEW GRAHAM
TAMMY BROWN
Attorneys for Defendant, Cigarettes Cheaper!

ORDER

IT IS SO ORDERED:

THE HONORABLE MARIA ELENA JAMES
U.S. MAGISTRATE JUDGE

STIPULATED JUDGMENT